

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of

Applicants : Kevan et al.

Serial No. : 10/092,162

Confirm. No. : 9230

Filed : March 6, 2002

Title : METHOD AND SYSTEM FOR PROVISIONING ELECTRONIC
FIELD GUIDES

Docket No. : GOW 0091 PA

Examiner : Ortiz, Belix M.

Art Unit : 2175

BEST AVAILABLE COPY

JAN 10 2005

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

**DECLARATION OF SHERRENE D. KEVAN, PETER G. KEVAN, AND DAVE
PLETSCH UNDER 37 C.F.R. 1.131**

Sherrene D. Kevan, Peter G. Kevan, and Dave Pletsch, the applicants in the above-identified patent application, declare as follows:

1. We are the co-inventors of claims 1-12 of the above-identified patent application, and we are the inventors of the subject matter described and claimed therein.

2. The above-identified application is assigned to BirdSong Bytes, Inc., with whom we were employed on the filing date of this application.

3. We are familiar with the Office Action mailed September 9, 2004, including the rejections made by the Examiner therein. We are also familiar with the references cited by the Examiner in that Office Action, including U.S. Patent Application Publication US 2002/0151327 issued to Levitt ("Levitt Application") reference.

4. On a date prior to December 20, 2001, the U.S. filing date of the Levitt Application, and further on a date prior to December 22, 2000, the U.S. filing date of the

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provisional application No. 60/258,115 that the Levitt Application claims priority back to (see Attachment A), we had jointly conceived the subject matter of claims 1-12 of this patent application.

5. On March 7, 2001, we constructively reduced the subject invention to practice by filing a provisional patent application with the United States Patent & Trademark Office (USPTO). That application was given serial number 60/273,542.

6. In accordance with current practice, as sanctioned in MPEP §715.07, we have left blank all conception and diligence dates up to a time just prior to the December 22, 2000 filing date of US provisional application No. 60/258,115 to Levitt. At least from a time just prior to that date until the March 7, 2001 constructive reduction to practice of provisional application 60/273,542, we were diligent in our efforts to pursue patent protection. As evidence of the conception of the invention prior to December 22, 2000, and our diligence, including the diligence of those who acted on our behalf, from this conception date to the March 7, 2001 constructive reduction to practice of provisional application 60/273,542, we submit the following exhibits.

Exhibit A is a copy of a Subcontract Proposal dated prior to December 22, 2000, for the Development of Beta Version Software of the recited invention. This proposal describes the recited invention and provides estimations as to time and cost to complete the software development prior to December 22, 2000 and thus illustrates that the invention was fully conceived prior to December 22, 2000.

Exhibit B is a copy of the Alpha Build 50 CD given to the first test group. This CD contains a working prototype of the completed programming and multimedia files necessary to operate the recited invention on a desktop computer. The software and data files on the Alpha Build 50 CD have a date prior to December 22, 2000.

Exhibit C is a user installation guide provided to the first test group of the Alpha Build 50 software. The guide explains to the users how to install the Alpha Build 50

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software onto their computers for use during the first test. The user installation guide is dated prior to December 22, 2000.

Exhibit D is an email detailing the minutes of a project meeting held prior to December 22, 2000, which includes project projections and scheduling. On page 2, paragraph 3, item number 1 describes that the five Alpha Build 50 CD's were produced by Dave Pletsch before this meeting. In addition, on page 1, paragraph 4, the minutes identify that a representative of BirdSong Bytes, Inc., was contacting handheld manufacturers about possible price break points for bulk purchases of handheld personal digital assistants ("PDA"). In paragraph 11 of page 1, the meeting's minutes also detail that a second document on market research titled, "Viability of Palm Held Computer and CD Rom", was distributed and that the marketing strategy and viability of the recited invention was discussed. Finally, on page 2, paragraph 7, the minutes describe that the third test group will test the prototype on PDA's and will be performed prior to December 22, 2000. All these further demonstrate that the recited invention was conceived, the Alpha Build 50 software was reduced to practice, and continued diligence to constructive reduction to practice of the subject matter of the recited invention prior to December 22, 2000.

Exhibit E is a copy of the minutes of a second project meeting, which shows that the first test of the Alpha Build 50 software on desktop computers was completed and survey results were available prior to December 22, 2000.

Exhibit F is a copy of a facsimile dated prior to December 22, 2000, which included completed Test Questionnaires from the first test group of the Alpha Build 50 software, illustrating that the Alpha Build 50 software was working on a desktop prior to December 22, 2000.

Exhibit G is a proposal dated prior to December 22, 2000, from Johnson Ink Word Warriors, a company BirdSong Bytes, Inc. had been corresponding with to perform marketing research on the present invention.

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Exhibit H is an email correspondence dated January 30, 2001, between us and Mr. Kent Ledwell of Gowlings Lefleur Henderson, LLP, a patent attorney we ultimately hired to file the provisional application 60/273,542, wherein we discuss patent search websites.

Exhibit I is an email correspondence from Mr. Ledwell dated February 1, 2001, wherein Mr. Ledwell provides us legal advice on the patent process and filing strategy.

Exhibit J is an email correspondence from Mr. Ledwell dated February 21, 2001, detailing that the provisional patent application is almost complete.

Exhibit K is a copy of the Provisional Application For Patent Cover Sheet submitted to the USPTO showing receipt of the provisional application 60/273,542 by the USPTO on March 7, 2001.

7. The non-provisional patent application 10/092,162 for the recited invention claims priority to the provisional application 60/273,542, which describes the recited invention and was filed less than one year from the date of the first test described above.

We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful and false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application and any patent issued thereon.

Date: Jan. 9, 2005

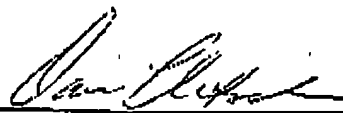
Sherrene D. Kevan
Sherrene D. Kevan

Date: 9 January 2005

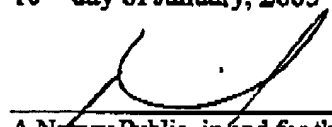
Peter G. Kevan
Peter G. Kevan

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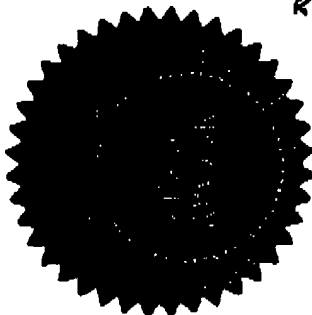
Date: Jan 10/05


Dave Plotsch

DECLARED by the above-mentioned
deponents before at me at the City of
Guelph, Province of Ontario, Canada, this
10th day of January, 2005


A Notary Public, in and for the Province
of Ontario, Canada

ROBERT ANDREW NIXON



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